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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 5:14-CV-05344-BLF

~~[PROPOSED]~~ STIPULATED  
PROTECTIVE ORDER

Date Filed: December 5, 2014

Trial Date: August 1, 2016.

## I. PURPOSES AND LIMITATIONS

Plaintiff Cisco Systems, Inc. and Arista Networks, Inc. (collectively referred to herein as the “Parties”) anticipate that disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the court to enter the following Protective Order (“Order”). The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 14.4 below, that this Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the court to file material under seal.

## II. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that contain trade secrets, proprietary research, development, and/or technical information that is not publicly available; sensitive financial, business, or commercial information that is not publicly available; and other information required by law or agreement to be kept confidential.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1           2.5    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other things,  
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
4 responses to discovery in this matter.

5           2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.7    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items" that is highly proprietary or highly  
12 sensitive such that disclosure could harm the competitive interests of the Producing Party or a  
13 Non-Party that provided the information to the Producing Party on a confidential basis.

14          2.8    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
15 extremely sensitive "Confidential Information or Items" containing Source Code.

16          2.9    House Counsel: attorneys who are employees of a party to this action. House  
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18          2.10   Non-Party: any natural person, partnership, corporation, association, or other legal  
19 entity not named as a Party to this action.

20          2.11   Outside Counsel of Record: attorneys who are not employees of a party to this  
21 action but are retained to represent or advise a party to this action and have appeared in this action  
22 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

23          2.12   Party: any party to this action, including all of its officers, directors, employees,  
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25          2.13   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
26 Material in this action.

27          2.14   Professional Vendors: persons or entities that provide litigation support services  
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(e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.17 Source Code: human-readable programming language text that defines software, firmware, or electronic hardware descriptions as well as any and all programmer notes, annotations, and other comments of any type related thereto and accompanying the code. Source Code files include without limitation files containing code in “C,” “Objective C,” “C-1+,” “Python,” assembler, VHDL, and Verilog programming languages. Source Code files further include without limitation files, make files, link files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, debug files, and other human-readable text files used in the generation and/or building of software and/or hardware. Any Producing Party may designate documents as “HIGHLY CONFIDENTIAL – SOURCE CODE” upon making a good faith determination that the items qualify as Source Code.

### III. SCOPE

This Order applies not only to Protected Material furnished by a Producing Party, but also to (1) copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, compiling, or disclosing Protected Material; and (2) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party

1 as a result of publication not involving a violation of this Order, including becoming part of the  
2 public record through trial or otherwise; and (b) any information known to the Receiving Party  
3 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
4 obtained the information lawfully and under no obligation of confidentiality to the Designating  
5 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### 6 **IV. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations imposed by  
8 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
9 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
10 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
11 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
12 including the time limits for filing any motions or applications for extension of time pursuant to  
13 applicable law.

#### 14 **V. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
16 or Non-Party that designates information or items for protection under this Order must take care  
17 to limit any such designation to specific material that qualifies under the appropriate standards. If  
18 it comes to a Designating Party's attention that information or items that it designated for  
19 protection do not qualify for protection at all or do not qualify for the level of protection initially  
20 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the  
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1 mistaken designation.<sup>1</sup>

2           5.2     Manner and Timing of Designations. Except as otherwise provided in this Order  
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4 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
6 designated before the material is disclosed or produced, provided, however, that the Producing  
7 Party's failure to do so shall not constitute a waiver.

8           Designation in conformity with this Order requires:

9           (a) for information in documentary form (e.g., paper or electronic documents, but  
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
11 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
12 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains  
13 protected material. If only a portion or portions of the material on a page qualifies for protection,  
14 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
15 appropriate markings in the margins) and must specify, for each portion, the level of protection  
16 being asserted.

17           A Party or Non-Party that makes original documents or materials available for inspection  
18 need not designate them for protection until after the inspecting Party has indicated which  
19 material it would like copied and produced. During the inspection and before the designation, all

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21 <sup>1</sup> Notwithstanding the foregoing, to facilitate use of materials produced and/or generated in *In the*  
22 *Matter of Certain Network Devices, etc.*, Investigation No. 337-TA-944 and *In the Matter of*  
23 *Certain Network Devices, etc.*, Investigation No. 337-TA-945 ("ITC actions"), Protected Material  
24 produced by a Party designated in the ITC actions as "CONFIDENTIAL BUSINESS  
25 INFORMATION, SUBJECT TO PROTECTIVE ORDER" will be deemed to have been  
26 produced in this case and designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
27 ONLY." Protected Material produced by a Party designated in the ITC actions as  
28 "CONFIDENTIAL SOURCE CODE SUBJECT TO PROTECTIVE ORDER" will be deemed to  
have been produced in this case and designated "HIGHLY CONFIDENTIAL – SOURCE  
CODE." Those materials are also subject to the Protective Orders entered into in the ITC actions.  
If there is any conflict between those Protective Orders and this Order, the more restrictive  
Protective Order shall govern. For the sake of clarity, the Parties will confirm, in writing under  
separate cover, the specific materials produced in the ITC actions that will be deemed to have  
been produced in this case; only those materials specifically identified will be deemed to have  
been produced in this case.

1 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
3 copied and produced, the Producing Party must determine which documents, or portions thereof,  
4 qualify for protection under this Order. Then, before producing the specified documents, the  
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
7 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
8 material on a page qualifies for protection, the Producing Party also must clearly identify the  
9 protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for  
10 each portion, the level of protection being asserted.

11 (b) for deposition testimony, including transcripts, such testimony shall be deemed  
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the expiration of fifteen (15)  
13 days after the deposition unless otherwise designated at the time of the deposition or during the  
14 fifteen (15) day period. Pages or entire transcripts of testimony given at a deposition or hearing  
15 may be designated as containing “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information  
17 by an appropriate statement either at the time of the giving of such testimony or by written  
18 notification within fifteen (15) days after the deposition. If the testimony is not otherwise  
19 designated at the time of the deposition or during the fifteen (15) day period after the deposition,  
20 the testimony will be deemed to be “CONFIDENTIAL.”

21 Transcripts containing Protected Material shall have an obvious legend on the title page  
22 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
23 pages (including line numbers as appropriate) that have been designated as Protected Material and  
24 the level of protection being asserted by the Designating Party. The Designating Party shall  
25 inform the court reporter of these requirements.

26 (c) for transcripts of pretrial and trial proceedings, Parties shall give the other parties  
27 notice if they reasonably expect a hearing or other proceeding to include Protected Material so  
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1 that the other parties can ensure that only authorized individuals and individuals who have signed  
2 the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings.  
3 Procedures for requesting confidentiality designations of transcripts for pretrial and trial  
4 proceedings shall be in accordance with paragraph 5.2(b) and redaction requests shall be made in  
5 accordance with General Order No. 59 and any other applicable rules and procedures set forth by  
6 the Court. If a Designating Party seeks redaction of portions of a hearing or trial transcript  
7 disclosing its Protected Material, the Receiving Party agrees not to unreasonably withhold its  
8 consent to such a request.

9 (d) for information contained in written discovery responses, the responses may be  
10 designated as containing "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
11 EYES ONLY," or “HIGHLY CONFIDENTIAL – SOURCE CODE” information by means of a  
12 statement at the conclusion of each response that contains such information specifying the level  
13 of designation of the Protected Material and by placing a legend of the front page of such  
14 discovery responses stating: “CONTAINS CONFIDENTIAL INFORMATION/[the highest level  
15 of designation contained in the answers].”

16 (e) for information produced in some form other than documentary and for any other  
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
18 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
20 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection,  
21 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify  
22 the level of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the Designating Party’s  
25 right to secure protection under this Order for such material. Upon timely correction of a  
26 designation, the Receiving Party must make reasonable efforts to assure that the material is  
27 treated in accordance with the provisions of this Order.  
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## VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of this Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within fourteen (14) days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Challenging Party shall file and serve a motion to challenge confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within twenty-one (21) days of the initial notice of challenge or within fourteen (14) days of the Parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. In addition,

1 the Designating Party may file a motion to retain confidentiality in response to a notice of  
2 challenge. Any motion brought pursuant to this provision must be accompanied by a competent  
3 declaration affirming that the movant has complied with the meet and confer requirements  
4 imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Challenging  
6 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
7 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
8 sanctions. Until the dispute as to the proper level of confidentiality has been resolved by  
9 agreement or by an order issued by the Court, all parties shall continue to afford the material in  
10 question the level of protection to which it is entitled under the Designating Party's designation  
11 until the court rules on the challenge.

## 12 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
14 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
16 the categories of persons and under the conditions described in this Order. When the litigation has  
17 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location and  
20 in a secure manner that ensures that access is limited to the persons authorized under this Order.  
21 Protected Material, including all "CONFIDENTIAL" Information or Items, shall not be removed  
22 from the United States.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
24 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
25 information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
27 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
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1 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
2 (Exhibit A);

3 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
4 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
7 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
8 Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
11 Vendors to whom disclosure is reasonably necessary for this litigation;

12 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
13 necessary and who agree to be bound by the terms of this Protective Order (pages of transcribed  
14 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
15 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
16 Order); and

17 (g) the author or recipient of a document containing the information or a custodian or  
18 other person who otherwise possessed or knew the information.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
22 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
23 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
25 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
26 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
27 (Exhibit A);  
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(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation; and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(B) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the Expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>2</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in

<sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 connection with which the Expert has offered expert testimony, including through a declaration,  
2 report, or testimony at a deposition or trial, during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in the preceding  
4 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,  
5 within fourteen (14) days of delivering the request, the Party receives a written objection from the  
6 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the  
8 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
9 agreement within seven (7) days of the written objection. If no agreement is reached, the Party  
10 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
11 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court  
12 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
13 reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
14 disclosure would entail, and suggest any additional means that could be used to reduce that risk.  
15 In addition, any such motion must be accompanied by a competent declaration describing the  
16 parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content of the meet and  
17 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal  
18 to approve the disclosure.

19 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
20 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
21 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

## 22 **VIII. PROSECUTION BAR**

23 Absent written consent from the Producing Party, any individual who receives "HIGHLY  
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" technical information or "HIGHLY  
25 CONFIDENTIAL – SOURCE CODE" information shall not (i) prepare or participate in the  
26 prosecution of any patent application for the Receiving Party; (ii) prepare or participate in the  
27 prosecution of any patent application in subject areas related to that of any patent in suit on behalf  
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1 of any entity (except on behalf of the Producing Party) whether or not a Party; or (iii) prosecute  
2 any patent application related in any way to any patent in suit (including any continuation,  
3 continuation in part, or divisional relationship, including any parent or child relationship, and  
4 including any re-examination or interference), before any foreign or domestic agency, including  
5 the United States Patent and Trademark Office (“the Patent Office”). For purposes of this  
6 paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or  
7 otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution”  
8 as used in this paragraph does not include representing a party challenging a patent before a  
9 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*  
10 reexamination, *inter partes* reexamination, *inter partes* review, post grant review, and  
11 proceedings under the transitional program for covered business method patents). This  
12 Prosecution Bar shall begin when “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
13 or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected  
14 individual and shall end two (2) years after final termination of this action.

#### 15 **IX. SOURCE CODE**

16 9.1 To the extent production of Source Code becomes necessary in this case, a  
17 Producing Party may designate Source Code as “HIGHLY CONFIDENTIAL – SOURCE  
18 CODE” if it comprises or includes confidential, proprietary, or trade secret Source Code.

19 9.2 Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE” shall be subject to the protections of this section, as well as all of the protections afforded  
21 to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the  
22 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the individuals to whom  
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as  
24 set forth in Paragraphs 7.3 and 7.4.

25 9.3 Any Source Code produced in discovery shall be made available for inspection, in  
26 a format allowing it to be reasonably reviewed and searched, during normal business hours,  
27 which for purposes of this paragraph shall be 9:00 a.m. through 5:00 p.m. local time, Monday  
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1 through Friday (excluding holidays), at the reviewing location, or at other mutually agreeable  
2 times, in the United States at an office of the Producing Party's counsel or other mutually agreed  
3 upon location.

4           9.4     The Source Code shall be made available for inspection in a locked room, on no  
5 more than two standalone, secured computers without Internet access or network access to other  
6 computers and with all ports, software and other means that could be used to copy or transfer  
7 such data blocked ("Standalone Computer(s)"), and the Receiving Party shall not copy, remove,  
8 or otherwise transfer any portion of the source code onto any recordable media or recordable  
9 device. The Standalone Computer(s) may be password protected. Use or possession of any  
10 input/output device (*e.g.*, USB memory stick, cameras or any camera-enabled device, CDs,  
11 floppy disk, portable hard drive, laptop, cell phone, etc.) is prohibited while accessing the  
12 Standalone Computer(s). All persons entering the locked room containing the Source Code must  
13 agree to submit to reasonable security measures to ensure they are not carrying any prohibited  
14 items before they will be given access to the locked room. The Standalone Computer(s) shall be  
15 maintained in the sole control and custody of counsel of record for the Supplier. No person other  
16 than the Producing Party may alter, dismantle, disassemble or modify the Standalone  
17 Computer(s) in any way, or attempt to circumvent any security feature of the computer.

18           9.5     The Standalone Computer(s) shall, at the Receiving Party's request, include  
19 reasonable analysis tools appropriate for the type of Source Code. The Receiving Party shall be  
20 responsible for providing the tools or licenses to the tools that it wishes to use to the Producing  
21 Party so that the Producing Party may install such tools on the Standalone Computer(s).

22           9.6     The Producing Party may visually monitor the activities of the Receiving Party's  
23 representatives during any Source Code review, but only to ensure that there is no unauthorized  
24 recording, copying, or transmission of the Source Code.

25           9.7     The Producing Party may provide a log at the secure room, in which case the  
26 Receiving Party is obligated to complete the log on a daily basis to identify the Receiving Party's  
27 representatives entering the secure room, including signing a sign-in sheet prior to, and a sign-out  
28



1 sheet subsequent to, accessing the Standalone Computer(s) including the name of the person  
2 accessing, the date and time in and out.

3 9.8 All persons who will review source code on the Standalone Computer(s) on behalf  
4 of a Receiving Party on a particular day shall be identified in writing to the Producing Party at  
5 least twenty-four (24) hours prior to review. The Producing Party shall provide these individuals  
6 with information explaining how to start, log on to, and operate the Standalone Computer(s) in  
7 order to access the produced Source Code on the Standalone Computer(s).

8 9.9 Proper identification of all persons who will review Source Code shall be  
9 provided prior to any access to the location of the Standalone Computer(s). Proper identification  
10 is hereby defined as a photo identification card sanctioned by the government of a U.S. state, by  
11 the District of Columbia, by the United States federal government, or by the nation state of the  
12 authorized person's current citizenship. Access to the location of the Standalone Computer(s)  
13 may be denied, at the discretion of the Producing Party, to any individual who fails to provide  
14 proper identification. Any persons who will review Source Code who request access to the  
15 location of the Standalone Computer(s) shall be identified in writing to the Producing Party at  
16 least four (4) business days in advance of the first time that such person reviews such Source  
17 Code and shall counter-sign a copy of the Acknowledgement and Agreement To Be Bound  
18 (attached as Exhibit A) prior to commencing that person's first inspection.

19 9.10 No person shall copy, e-mail, transmit, upload, download, print, photograph or  
20 otherwise duplicate any portion of the designated Source Code, unless explicitly permitted by this  
21 Order. The Receiving Party may request paper copies of portions of Source Code that they in  
22 good faith consider reasonably necessary to proving elements of their case, including for the  
23 preparation of filings, pleadings, expert reports, other papers, or for deposition or any hearing, but  
24 shall not request paper copies for the purpose of reviewing the Source Code. If the Producing  
25 Party believes the Receiving Party has requested that an unreasonable amount of Source Code be  
26 printed, the Producing Party may challenge the amount of source code requested in hard copy  
27 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6. All  
28



1 paper copies of Source Code excerpts shall be produced by the Producing Party within two (2)  
2 business days of the request (unless additional time is needed due to the volume requested). The  
3 Producing Party shall provide all such Source Code excerpts in paper form, including Bates  
4 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." At the Receiving  
5 Party's request, up to two additional sets (or subsets) of printed Source Code excerpts may be  
6 requested and provided by the Producing Party in a timely fashion.

7 9.11 The Receiving Party's Outside Counsel of Record and/or Expert shall be entitled  
8 to take notes relating to the Source Code but may not copy any portion of the Source Code into  
9 the notes. No copies shall be made of source code or any portion thereof, whether physical,  
10 electronic or otherwise.

11 9.12 All HIGHLY CONFIDENTIAL – SOURCE CODE material, including all copies,  
12 in the possession of the Receiving Party shall be maintained in a secured, locked area under the  
13 direct supervision of Outside Counsel of Record for that party. The Source Code shall also be  
14 kept in a locked container when not in use. The Receiving Party shall not create any electronic or  
15 other images of the paper copies and shall not convert any of the information contained in the  
16 paper copies into any electronic format except as provided in paragraph 9.13 below. The  
17 Receiving Party may also temporarily keep the print outs at: (1) the court for any proceedings(s)  
18 relating to the Source Code, for the dates associated with the proceeding(s); (2) the sites where  
19 any deposition(s) relating to the Source Code are taken, for the dates associated with the  
20 deposition(s); and (3) any intermediate location reasonably necessary to transport the print outs  
21 (e.g., a hotel prior to a court proceeding or deposition).

22 9.14 The Receiving Party shall maintain a record of (1) any individual who has  
23 accessed or inspected any portion of the Source Code in electronic or paper form, and (2) the  
24 location and custodian of all Source Code in the possession of the Receiving Party. The  
25 Receiving Party shall not create any electronic or other images of the paper copies and shall not  
26 convert any of the information contained in the paper copies into any electronic format, except in  
27 limited excerpts as necessary to prepare discovery responses, expert reports and other  
28

1 investigation papers and filings. The Receiving Party shall make no more than two additional  
2 paper copies of any Source Code received from the Producing Party and only if such additional  
3 copies are (1) necessary to prepare filings, pleadings, or other papers (including a testifying  
4 Expert's expert report) or (2) necessary for deposition. Whenever such hard copies are made, the  
5 Receiving Party shall maintain a record of the Bates numbers of such pages, along with an  
6 identification of when the copies were made and who made them. Any hard copies shall be  
7 conspicuously marked "HIGHLY CONFIDENTIAL – SOURCE CODE" in conformity with  
8 paragraph 9.10. Any paper copies used during a deposition shall be retrieved by the Party  
9 conducting the deposition at the end of each day and must not be given to or left with a court  
10 reporter or any other unauthorized individual. Upon request of a Receiving Party, a Producing  
11 Party shall make a Standalone Computer with a full copy of any Source Code produced by the  
12 Producing Party available for use at a deposition.

13 9.15 Except as provided in this paragraph, the Receiving Party may not create  
14 electronic images or any other images of the Source Code from the paper copy for use on a  
15 computer (*e.g.*, scanning the Source Code to a PDF or photographing the code is prohibited). The  
16 Receiving Party may create an electronic copy or image of limited excerpts of source code only to  
17 the extent expressly allowed in this Order and only to the extent necessary in a pleading, exhibit,  
18 expert report, discovery document, deposition transcript, other Court document, or any drafts of  
19 these documents ("Source Code Documents"). The Receiving Party shall only include such  
20 excerpts as are reasonably necessary for the purposes for which such part of the Source Code is  
21 used. Images or copies of Source Code shall not be included in correspondence between the  
22 parties (references to production numbers shall be used instead) and shall be omitted from  
23 pleadings and other papers except to the extent permitted herein. Any electronic file containing  
24 such a Source Code image shall be encrypted using commercially reasonable encryption software,  
25 including password protection. The disclosure of electronic files containing any portion of  
26 Source Code shall at all times be limited to individuals who are authorized to see Source Code  
27 under the provisions of this Protective Order. Additionally, all electronic copies must be labeled  
28

1 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2 9.16 To the extent portions of Source Code are quoted in a Source Code Document,  
3 either (1) the entire document will be labeled and treated as HIGHLY CONFIDENTIAL –  
4 SOURCE CODE information or (2) those pages containing quoted Source Code will be  
5 separately bound, labeled and treated as HIGHLY CONFIDENTIAL – SOURCE CODE  
6 information.

7 9.17 Notwithstanding Paragraph IV above, within twenty (20) calendar days after final  
8 disposition of this case (as the term “final disposition” is defined in Paragraph IV), the Receiving  
9 Party must serve upon the Producing Party a certification of the destruction of all copies of the  
10 Producing Party’s Source Code.

11 9.18 Access to and review of the Source Code shall be strictly for the purpose of  
12 investigating the claims and defenses at issue in this case. No person shall review or analyze any  
13 Source Code for purposes unrelated to this case, nor may any person use any knowledge gained  
14 as a result of reviewing Source Code in this case in any other pending or future dispute,  
15 proceeding, or litigation.

16 9.19 Unless otherwise agreed in advance by the parties in writing, following each day  
17 on which inspection is conducted in accordance with this Order, the Receiving Party’s Outside  
18 Counsel of Record and/or Expert shall remove all notes, documents, and all other materials from  
19 the secure room. The Producing Party shall not be responsible for any items left in the room  
20 following each inspection session, and the Receiving Party shall have no expectation of  
21 confidentiality for any items left in the room following each inspection session without a prior,  
22 written agreement to that effect.

23 **X. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24 **OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels  
26 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
28 – SOURCE CODE,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include a  
2 copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
4 other litigation that some or all of the material covered by the subpoena or order is subject to this  
5 Order. Such notification shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
7 Designating Party whose Protected Material may be affected.<sup>3</sup>

8 If the Designating Party timely seeks a protective order, the Party served with the  
9 subpoena or court order shall not produce any information designated in this action as  
10 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
11 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
12 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
13 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
14 court of its confidential material – and nothing in these provisions should be construed as  
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
16 another court.

17 **XI. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
18 **THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-Party in  
20 this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
22 information produced by Non-Parties in connection with this litigation is protected by the  
23 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
24 prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce a

26 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect  
28 its confidentiality interests in the court from which the subpoena or order issued.

Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within twenty-one (21) days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>4</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

## **XII. EXPORT CONTROL REQUIREMENTS**

Notwithstanding anything to the contrary contained herein, the following additional requirements apply to all Protected Material:

(a) The Receiving Party acknowledges that the Protected Material received under this Order may be subject to export controls under the laws of the United States and other applicable laws. The Receiving Party shall comply with such laws and agrees not to knowingly export, re-export or transfer Protected Material of the Producing Party without first obtaining all required United States or any other applicable authorizations or licenses. The Receiving Party acknowledges that Protected Material disclosed by the producing party may be subject to,

---

<sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 including but not limited to, the U.S. Export Administration Regulations (EAR), Export Control  
2 Classification Number (ECCN) 5E001 pertaining to Dynamic Adaptive Routing, Optical  
3 Switching, SS7, non-aggregated port speed data transfer rates exceeding 15Gbps; and ECCN  
4 5E002 cryptography.

5  
6 (b) The Receiving Party agrees to maintain adequate controls to prevent nationals of  
7 countries listed in the EAR, Part 740 Supplement No. 1, Country Group D:1 or E from accessing  
8 the Producing Party's Protected Material, subject to ECCN 5E001; or nationals outside the U.S.  
9 and Canada from accessing such Protected Material, subject to ECCN 5E002—without U.S.  
10 Government authorization. The Receiving Party furthermore agrees to notify the Producing Party  
11 prior to granting a foreign national, of countries listed in the groups D:1 or E, access to the  
12 Standalone Computer, access to hard copies of Protected Material, or placement on a project  
13 requiring receipt or review of the Producing Party's Protected Material. The term "national" is  
14 defined as any person who is not a U.S. person or national/citizen, lawful permanent resident,  
15 person granted asylee or refugee status, or temporary resident granted amnesty.

### 16 **XIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
18 Material to any person or in any circumstance not authorized under this Order, the Receiving  
19 Party must immediately (a) notify in writing the Designating Party of the unauthorized  
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
21 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
22 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
23 Be Bound" that is attached hereto as Exhibit A.

### 24 **XIV. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 25 PROTECTED MATERIAL**

26 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
27 produced material is subject to a claim of privilege or other protection, the obligations of the  
28 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to

1 Federal Rule of Evidence 502(b), the inadvertent production of a privileged document or  
2 communication or work product is not a waiver in this case or in any other federal or state court  
3 proceeding.

4 **XV. MISCELLANEOUS**

5 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
6 seek its modification by the court in the future.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party  
8 waives any right it otherwise would have to object to disclosing or producing any information or  
9 item on any ground not addressed in this Order. Similarly, no Party waives any right to object on  
10 any ground to use in evidence of any of the material covered by this Order.

11 14.3 Producing Party's Material. The restrictions on the use of Protected Material  
12 established by this Order are applicable only to the use of information received by a party from  
13 another Party or from a Non-Party. A Party is free to use its own information as it pleases.

14 14.4 Filing Protected Material. Without written permission from the Designating Party  
15 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
16 the public record in this action any Protected Material. A Party that seeks to file under seal any  
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
19 issue. If a request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is  
20 denied by the court, then the filing party may file the Protected Material in the public record  
21 pursuant to Civil Local Rule 79-5(f) unless otherwise instructed by the court.

22 14.5 Advice of Counsel. Nothing in this Order shall prevent or otherwise restrict  
23 Outside Counsel of Record from rendering advice to their clients and, in the course thereof,  
24 relying generally on Protected Material; provided, however, that in rendering such advice counsel  
25 shall not disclose, reveal or describe any such materials except insofar as allowed (if allowed at  
26 all) under the terms of this Order.

**XVI. FINAL DISPOSITION**

Within sixty (60) days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that confirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.



DATED: June 25, 2015

Respectfully submitted,

/s/ Sean S. Pak

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*Attorneys for Plaintiff Cisco Systems, Inc.*

10 DATED: June 25, 2015

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26  
27  
28


**ATTORNEY ATTESTATION**

I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of Brian L. Ferrall within this e-filed document.

/s/ Sean S. Pak

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 26, 2015

  
\_\_\_\_\_  
HON. BETH LABSON FREEMAN  
United States District Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Northern District of California on \_\_\_\_\_ [date] in the  
case of *Cisco Systems, Inc. v. Arista Networks, Inc.*, Case No. 14-cv-5344-BLF. I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand  
and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

\_\_\_\_\_  
[Printed name]

\_\_\_\_\_  
[Signature]